



# MAYOR AND COUNCIL AGENDA

NO. 17 DEPT.: Legal/ Community Planning and Development Services DATE: July 27, 2004

Contact: Deane Mellander, Planner III

**ACTION:** Discussion and Instruction on proposed zoning text amendment TXT2004-00208: to amend the Zoning Ordinance to add "Cosmetology" as a special exception use in the one-family detached zones; Erika Kapneck, applicant.

## ACTION STATUS:

**FOR THE MEETING OF:** 8/2/04

INTRODUCED 5/10/04

PUB. HEARING 7/19/04

INSTRUCTIONS 8/2/04

APPROVED

EFFECTIVE

## ROCKVILLE CITY CODE,

CHAPTER 25

SECTION 25-1, 25-375

☐ CONSENT AGENDA

**RECOMMENDATION:** Discuss the public hearing testimony and provide instructions to staff.

**IMPACT:** ☐ Environmental ☐ Fiscal ☒ Neighborhood ☐ Other:

Will allow cosmetology as a home occupation limited to one service chair as a special exception.

**BACKGROUND:** The applicant requested that the Mayor and Council accept a proposed text amendment to allow cosmetology as a permitted home occupation in the residential zones. At the meeting on May 10, 2004, the Mayor and Council directed staff to prepare a text amendment that would allow the use as a special exception, limited to one service chair, in the one-family detached residential zones. This reflects the way the equivalent use, "Beauty culture", had been treated in the zoning ordinance between 1961 and 1981.

The proposed text amendment would establish "Cosmetology" as a special exception use in the one-family zones. It modifies the home occupation definition to allow a separate entrance from the outside into the business. Article VIII, regulating special exceptions, is amended to provide recommended development standards for the use, including a limitation on the number of service chairs and a requirement the off-street parking be required unless the Board of Appeals finds that on-street parking would not have an adverse impact on the surrounding neighborhood.

Post card notice and a draft of the proposed text were mailed to all the civic associations and the business community.

The Planning Commission considered this proposal at its meeting on July 14, 2004. The Commission's recommended that the use be allowed as a permitted home occupation. Their

recommendation is attached.

At the public hearing, most of the testimony was in support of allowing the use as a permitted home occupation. There was some opposition testimony, generally expressing concern about the potential impact on the surrounding neighborhood due to traffic and parking. Additional opposition has been submitted to the record since the hearing (attached).

Staff was asked at the hearing to prepare a quick list of possible home occupations that might be allowed under the current regulations, if the uses were not restricted. The attached memo summarizes the staff's findings.

Based on the testimony received, there are three options that the Mayor and Council should consider with regard to this text amendment. They are:

1. Consider approving the text amendment as shown in attachment 1a, allowing it by special exception with the recommended standards and requirements. Staff suggests that the limitation on service chairs be clarified to make it clear that only one service chair per residence is allowed. Otherwise, it might be construed under the existing home occupation language that if more than one family member is a licensed cosmetologist, each could have his or her own service chair in the home. The Mayor and Council may want to consider limiting the number of clients present at any one time.
2. Amend the text amendment to allow the use as a permitted home occupation. This might entail including some specific standards (i.e., off-street parking required; number of service chairs, etc.) to limit the impact of the use. Attachment 1b illustrates a suggested change. As above, the Mayor and Council may want to consider limiting the number of clients present at any one time. It is important to note that as a permitted home occupation there would be no review of the adequacy of parking or of the separate entrance to ensure that it maintains a residential appearance.
3. Defer action and consider a more comprehensive revision of home occupations based on impact rather than use within the context of the comprehensive revision of the zoning ordinance, which would include a through review of home occupation provisions. This option may take a couple of years.

Staff has not attached all of the exhibits filed by the applicant in this case that were distributed to the Mayor and Council for the July 19, 2004 public hearing. They are all in the public record for review.

**PREPARED BY:**

Deane E. Mellander

Deane Mellander, Planner III

7/28/04

Date

**APPROVE:**

Robert J. Spalding

Robert J. Spalding, AICP, Chief of Planning

7-28-4

Date

**APPROVE:**

Arthur D. Chambers

Arthur D. Chambers, AICP, CPDS Director

7/28/04

Date

**APPROVE:**

Catherine Tuck Parrish

Catherine Tuck Parrish, Asst. City Manager

7/29/04

Date

**LIST OF ATTACHMENTS:**

- 1a. Proposed text amendment.
- 1b. Alternative language to allow as a permitted use.
2. Staff memo regarding potential home occupations.
3. Additional testimony submitted to the record.
4. Planning Commission recommendation.
5. Staff report to Planning Commission.

**Draft: Text Amendment TXT2004-00208 – 6/8/04**

Amend Article I, Division 1, Sec. 25-1, "Definitions", as follows:

*Home occupation* means an occupation conducted entirely within a dwelling unit only by a member of members of the immediate family residing therein, not including a boardinghouse, and which complies with all of the following conditions:

- (1) Does not have a separate entrance from outside the building except for offices of health professionals and cosmetologists;
- (2) Does not display or create outside the building any external evidence of the operation of the home occupation except that a sign shall be permitted on the lot in accordance with section 25-465;
- (3) Does not utilize more than twenty (20) percent of the gross floor area, or three hundred (300) square feet, whichever is lower, in the dwelling unit;
- (4) Does not have any regular assistants not residing in the dwelling unit except for the offices of health professionals;
- (5) Is limited to the use of motors powered by electricity with a total limitation of three (3) horsepower.

Amend Article VII, Division 2, Sec. 25-296, "Tables of uses", as follows:

Under "RESIDENTIAL USES" subsection "b", "Home occupations", add a new item number 7, entitled "Cosmetologist" and place an "S" for special exception in the columns for the R-E, R-S, R-150, R-90, R-75, and R-60 zones.

Amend Article VIII, Division 2, to add a new Section 25-375, entitled "Cosmetologist", as follows:

**Sec. 25-375. Cosmetologist.**

- (a) Scope. This section applies to a cosmetologist only as a home occupation and does not apply in nonresidential locations.
- (b) Special development and use requirements. The following special development and use requirements shall apply:
  - (1) Must comply with the requirements for a home occupation as set forth in Sec. 25-1, except as specified below:
    - a. Only one (1) customer service chair is allowed;
    - b. The Board of Appeals may approve a separate entrance from outside the residence that enters directly into the home occupation area when no existing outside entrance is found to be practical and such entrance is required by the state Department of Labor, Licensing and Regulation. Any separate entrance to the home occupation must be

- located so that the appearance of a single-family dwelling is preserved.
  - c. All external modifications and improvements to the one-family detached dwelling in which the use is located must be compatible with the existing dwelling and surrounding properties.
  - d. No variance may be granted to accommodate the use.
  - e. The Board may regulate the hours of operation.
  - f. One (1) off-street parking space must be provided in addition to the parking required for the residential use. The Board may waive this requirement if it finds that on-street parking will not have an adverse impact on neighboring residential uses.
- (c) Restrictions. The following restrictions on special exceptions for cosmetologists apply:
  - (1) The special exception is granted solely to the owner/applicant and does not run with the land;
  - (2) The special exception automatically expires when any of the following occurs:
    - a. The owner/applicant sells the property on which the use is located;
    - b. The use is abandoned for a period of more than 6 months;
    - c. The owner/applicant's license from the State Department of Labor, Licensing and Regulation to operate as a cosmetologist has been suspended or revoked, or has expired.

Note: [Brackets ] indicate material to be deleted.

Underlining indicates new text to be added.

Asterisks \* \* \* indicate material unchanged by this ordinance.

### Alternative Text Amendment Language to Allow as Permitted Use

*Home occupation* means an occupation conducted entirely within a dwelling unit only by a member or members of the immediate family residing therein, not including a boardinghouse, and which complies with all of the following conditions:

- ## Suggested Change in Land Use Tables

[illegible]



City of Rockville

## MEMORANDUM

July 26, 2004

TO: Mayor and Council

FROM: Robert J. Spalding, AICP, Chief of Planning *RJS*

VIA: Catherine Tuck Parrish, Acting City Manager *CTP*

SUBJECT: Home Occupations – Potential Uses

At the July 19, 2004 Mayor and Council public hearing on text amendment TXT2004-00208, staff was requested to prepare a quick list of potential home occupations. This list was requested to get a flavor of the types of uses that could be possible if the types of uses were not restricted.

The uses listed in the zoning ordinance were reviewed and other uses where staff receives inquiries or complaints about home occupations are summarized below. The attached list also includes uses discussed at the public hearing and that staff has seen in homes outside of Rockville (excluding agriculture-related home occupations).

cc: Art Chambers  
Deane Mellander

## Potential Home Occupations

Artist studio  
Bakery/confectioner  
Bed & Breakfast  
Bicycle repair  
Blacksmith  
Bulk mailing  
Bulk manufacturing/assembly  
Car detailing/washing  
Car repair (engine & body work)  
Car sales (retail & wholesale)  
Caterer  
Computer/small appliance repair  
Contractor's Office (mechanical, electrical, construction)  
Cosmetology  
Day Care  
Decorator  
Deli/Carry-out  
Dressmaking  
Furniture construction  
Graphics (design & desktop publishing)  
Kennel  
Landscaping and lawn service  
Light manufacturing/assembly  
Mail / delivery service  
Offices (general, attorney, medical, CPA, real estate, computer services)  
Palm Reader  
Photo studio  
Picture Framing  
Private club  
Recording Studio  
Restaurant  
Retailing (new, used, antique, inside, outside)  
Roofing repair service  
Small engine repair  
Tanning salon  
Tattoo parlor  
Tutoring  
Upholstering  
Wedding Chapel  
Woodworking



July 11, 2004

Routed To:

☒ Council☐ City Clerk☐ City Manager

OFFICE

☐ City Attorney☐ Council Support Specialist☒ Other

P.H. file

To: Frank Hilton, Chair and Members of the Planning Commission  
Mayor Larry Giammo and the City Council

From: Lora Meisner, President of the Burgundy Estates Civic Association

Re: Text Amendment Application – TXT2004-00208 – Erica Kapneck

*Art Chambers*  
*Bob Spalding*

I am writing to support the proposed changes that Ms. Kapneck is requesting as highlighted:

**D. Text Amendment Application TXT2004-00208, Erika L. Kapneck** - to amend Section 25-1, "Definitions" as well as add a new section to Article VIII, regulating special exceptions to allow "Cosmetologist" as a special exception use in the one-family residential zones.

I urged the Planning Commission to recommend adoption of this text amendment. The very fact that Ms. Kapneck has to jump through the City of Rockville's bureaucratic hoops in order to operate a small non-intrusive home based business shows how out of touch the City of Rockville is with "every day reality." As most of us are aware, telecommuting and home-based businesses thrive in every town across this country—entrepreneurship is the embodiment of our capitalist system.

Because our present political system and tax structure favor families in our nation's highest incomes, working families rely more and more two salaries to make ends meet. Some people are fortunate enough to have skills that allow them to work from their homes. This greatly enhances a family's ability to balance work, home-life, and raising children. Isn't this what the role of government is really about? Helping people to help themselves—working while successfully raising a family.

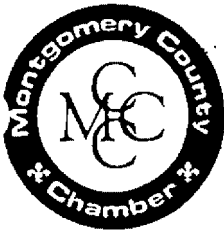
So, let's get out of Ms. Kapneck's way and allow her to cut some hair, paint some fingernails, make some money, and raise her family. If her neighbors are in favor of this special exception, if her civic association is in favor of it, and if her neighboring civic association (Burgundy Estates) is in favor of it—let's get it done.

Aren't we being rather "classist" if we allow doctors, lawyers, counselors, tutors, techies, online businesses and others to operate from home, yet under our list of home occupations, "cosmetologist" needs to be added as a special exception?

I urge the Planning Commission to do the right thing and recommend this text amendment. I also urge the Mayor and City Council to vote in favor of this text amendment as well. It would be good for Ms. Kapneck and good for the City of Rockville.

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"Never doubt that a small group of thoughtful, committed citizens  
can change the world; indeed, it's the only thing that ever has."

-- Margaret Mead



Montgomery County Chamber of Commerce  
51 Monroe Street, Suite 1609, Rockville, MD 20850  
301-738-0015 phone • 301-738-8792 fax • www.montgomery-chamber.com

Exhibit # 116

Subject: TXT04-00208

Public Hearing Date: 7/19/04

July 12, 2004

The Honorable Larry Giammo  
Mayor, and Members of the City Council  
City of Rockville  
111 Maryland Avenue  
Rockville, MD 20850

Routed To:

☒ Council  
☐ City Clerk  
☐ City Manager

☒ City Attorney  
☐ Council Support Specialist

☒ Other Art Chambers  
Dean Mollander  
Bob Spalding

RE: TXT 2004-00208 (Zoning Text Amendment, Cosmetology)

Dear Mayor Giammo and Members of the Council:

On behalf of the Montgomery County Chamber of Commerce, the County's largest and most broadly representative business organization, and the Voice of Montgomery County Business, I write to respectfully urge your consideration of the Zoning Text Amendment submitted by Erika Kapneck, to restore cosmetology to the list of permitted home occupations that are allowed to operate in residential areas of the City by right.

The members of the Montgomery County Chamber include many small home based businesses, in all sectors, and we are well aware of the burdensome requirements imposed on the proprietors of all of those businesses if they are forced to go through lengthy special exceptions and other laborious application procedures. Many find these procedures prohibitively expensive to undertake both on the basis of their legal costs and their time.

As you know, the backbone of our County's economy, just like the backbone of our national economy, is the small-to-mid-sized businesses in our community. It seems clear that permitting this use, by right, would help support and sustain an important segment of our small business community. We are also aware that in 1981, cosmetology was removed in error from the list of acceptable home-based businesses in the Charter.

We respectfully request that this error now be corrected and cosmetology be restored through this amendment. Thank you for your consideration. Please feel free to call me with any questions.

Sincerely,

Richard Parsons  
President & CEO

Routed To:

☒ Council

☐ City Clerk

☐ City Attorney

☐ Council Support Specialist

Exhibit #

~~KIDNEY CHAMBERS~~

Bob Spalding

D. McElhiney

Subject: TX 2004-00208

Public Hearing Date: 7/19/04

of the City Council of  
Rockville, Md.

This Counselor at Law  
text sounds wonderful  
with all the following  
generated by the petitioner.  
I was the only one to  
testify in opposition. I  
continue to remain against  
this matter.

If she is allowed to  
practice her skills at  
home as unsupervised  
as it will in reality be -  
it is opening a great  
opportunity for others  
to generate services as  
they see fit to perform  
them without true  
supervision.

It seems to me she  
would need four bedrooms

1. She & her husband

2. Mother

3. Adult son

4. New baby (desired)

Where would she do  
Counseling? In the  
Living Room? Kitchen? ? ?

Her request to me seems  
an accommodation for her  
wishes and one that will  
open a "big" nest of worms  
and devalue our residential  
neighborhoods and streets.

Who wants 15 people a  
day coming next door &  
occupying 3-4 spaces  
to park - ~~there~~ is unrealistic  
Vote against this

Attorneys will love  
such an amendment  
or legal language. This  
will create multiple reasons  
for them to do more legal  
work - attempting to get  
many "inappropriate home  
business" in our neighbor-  
hoods.

I listed some that will  
appear when I gave  
testimony.

Also I have seen in  
the petitioner's residence -  
how many bedrooms / rooms  
are in her home. She suffers  
she presently cares for two  
disabled family members.  
Also she plans to  
have children soon because  
of her age "toma clock."

*Meeting Mayor Granger and members of the City Council*  
*I have been here since 1980.*

I am here to expressing myself publically in this hearing -I am against Section 25-1 and Section 25-296 regarding the "home occucation" allowing cosmetologist the code language to perform their trade of business in the privacy of their homes.

I am here <sup>for several years</sup> to protect the licensed operators who maintain and work in a properly zoned commercial location, paying full income tax and costs of rent, utilities, maintenance, full liability insurance, advertising, housekeeping costs and other related expenses. In contrast, the home based cosmelologist is free to perform her services at a small fraction of cost, usually within home space that was previously used for general family use. Home operators can hide income insisting on cash payment. If they charge, comparable fees for beautfy services as a store operator, they are raking in a considerably higher rate of return.

A commercial location has posted hours, phone number, listinging of credit cards accepted, and major cosmetic brand products used. The private home oprator has no commercial phone bill, usually does not want credit card business as it is tracable and operated on a cash only basis. Leaving little trail of income on paper. She can get by with using cut rate hair produc ts. A health or license inspector can enter a store business location anytime during the business hours. A home operator can simply not answer the door, which she may or may not keep locked at all times (as this is in her private residence..) when she suspects a knock onthe door is coming from a health or official inspector to check out her business and health standards.

Today, I stopped by a business location. I identified myself and <sup>gave my purpose for being in the shop.</sup> That I wanted information, to present in this hearing. I was treated with respect, but I will admit there was a language barrier. I thanked the person in charge. Upon leaving I did make note: <sup>from ready the door</sup> 1. The shop had a commercial number in pink neon, bright from the sidewalk. ~~XXXX~~ Hours of operation were clearly posted on the door: M-F 9-7pm; 2; Sat 9-7; and Sun 12-5pm.; 3. She uses Nexus and Elxl products; 4. She accepts the following credit cards: Visa; Master Card, American Express; and possibly two other payment plans as shown by decal on the door.

I will not give the name, but it is located on Veirs Mill Road in the Twinbrook community. There were two additional persons at work in her salon.

*Mary Ann Barner*  
301-762-7582

7/22/04

( 5 )  
I showed her the newspaper notice. She didn't seem to know about the hering. Obviously, this operator has a considerable expense, has to maintain record keeping and most important, HER SALON IS AVAILABLE TO THE PUBLIC, NECESSARY HEALTH INSPECTORS AND MYSELF AS A WALK-IN person having this interest.

If I knocked on the door of a home or even home illegal salon operation, it is likely the door would not be answered....Being unknown to the operator, I would be presenting an unknown trouble or threat.

I am here to protect my street and perhaps even yours. Do you want a constant group of strangers ~~xxx~~ coming to your block or nearby six~~y~~-seven days a week, in a secretive manner. These we believe are coming for beauty services for their personal vanity and hopefully, to get cut rate prices.. Little do they realize that their clean towel may have been washed with the baby's laundry or adult's underwear. If not, at least it is in the same family used washing and dryer machines. There is nothing to regulate temperatures, sanitation in a private home location. Few of these operators would spend the money and cost to maintain separate washer/dryers for their hair business.

Strong chemicals are used in the cosmetology business. Some will either make "your hair stand on ends as straightners" or "curl your hair" also bleach/dye hair. These are timed applications, that if not applied properly can cause scalp and skin, eye burns. ~~In~~ a shop business, the operator is able to remain fully focused on her customer. In her home, she may have to ~~stop~~ and feed an infant, change or comfort <sup>and child, looked</sup> and adult family member. Does that family member had to sit day after day and have to breathe those strong chemicals that are probably somewhat toxic for ~~xxxx~~ infants, young children and older adults with health and breathing problems. If the operator, is keeping them in another room, how is she <sup>he</sup> properly supervising their care and safety. If she <sup>he</sup> is going to work, she <sup>he</sup> needs to have proper care for them so she can remain focused on her customer's needs. You can't be in two places at once.

Zoning: There are only a few select locations, one being Dr. Madden a practicing dentist at the corner of Viers Mill and Broadwood Drive in the City of Rockville ~~xx~~ in the Twinbrook Community.

RECOMMEND: No living arrangements be allowed in any facility space that performs cosmetology services.

*Mary Ann Baran*  
301-762-7582

7/22/04

Source: The Frontline News Post; Rocky Mount, Virginia  
July 14, 2004

*This is a small country road SW of Roanoke, Virginia. This rejection is in Franklin Co, Va - (near Mountain Lake Road) this country is located in pasture*

## Rezoning rejected

(Continued from Page 1-A)  
idential) to CBD (Central Business District) so she could have a law office in a house on the property.

Furrow currently has a law office at 392 Franklin St.

Furrow said she was aware there was some opposition to the rezone request.

Even so, Furrow said, "I will defend peoples' right to stand up and speak at a public hearing."

Furrow said she wants to have a law office in the house on Orchard Avenue because "it is a beautiful house and I love the character of it."

Furrow said she would not make any changes to the outside of the house and she would only have an unlit moderate size green sign on the property showing that the house is a law office.

"If this zoning request is turned down," Furrow said, "life goes on."

Furrow said she would also agree that the property could only be sold for a law office or a residence.

Edwin Chauncey and Barbara Chauncey, who live at 25 Orchard Ave.,

told council they are opposed to the rezoning that would allow a law office in a residential neighborhood.

Edwin Chauncey said rezoning the property to allow a law office "is inconsistent with the town's comprehensive plan" and is not consistent with orderly growth.

Edwin Chauncey also said the rezoning will impede traffic flow on Orchard Avenue and will have a negative impact on property values in the neighborhood.

Barbara Chauncey said Furrow's arguments for the rezoning request were not substantial and rezoning the property would set a dangerous precedent. She said a single mother and two children live two doors down from the house Furrow wants to have as a law office.

Betty Jones of Roanoke, who spoke on behalf of her parents, Thomas and Nancy Jones, who live at 170 Orchard Ave., said her parents are opposed to the rezoning request. She also said the law office would create parking problems and increase congestion. She said she has spent most of her life on Orchard Avenue.

"Why would town council consider destroying Orchard Avenue?" she said. Margie Angle, a resident at 55 Orchard

Ave., told council she and her husband have lived in their home on Orchard Avenue for 20 years.

"Our house is across the street from the house proposed to be a law office," said Angle. "We are opposed to placement of a business in our neighborhood. The rezoning would defeat the town's revitalization efforts and increase foot and auto traffic on Orchard Avenue. Moving a business into a residential area changes the flavor of the neighborhood."

Don Hutcherson, a resident at 110 Claiborne Ave., who owns property on Orchard Avenue, supported Furrow's rezoning request.

"I was born on Orchard Avenue," Hutcherson told town council. There are already businesses on Orchard Avenue. He said Ronlie Inc., which employs about 300 persons, and an auto repair shop are on Orchard Avenue.

"I don't find anything wrong with a law office on Orchard Avenue," said Hutcherson.

Council Member Steve Angle made the motion to deny Furrow's rezone request and the motion was seconded by council member Jerry Greer.

Exhibit # 18

Subject: TXT2004-00208

Public Hearing Date: 7/19/04

Maryann Barnes  
1204 Allison Drive  
Rockville, MD 20851

Public Hearing, Monday, July 19, 2004

Testimony for TXT2004-00208 Home Occupation Ericka Kapneck

Want this next door?

Routed To:

☐ City Attorney

☐ Council Support Specialist

☒ Other Art Chambers

*Paula Spalding*

*Debra Mullanda*

☒ Council

☐ City Clerk

☒ City Manager

1. Home beauty shop
2. Antique business
3. Used-consignment store
4. Gift shop
5. Cleaning service
6. Unlicensed Day Care
7. Same-Adult Day Care
8. Lawnmower shop/repair
9. Furniture refinishing
10. Car sound installation
11. Home catering
12. Home bakery
13. Tanning Salon

Suggest: Home cosmetology be denied, unless located in a specially previously zoned commercial site approved for use by physician, dental or valid physical therapy-no living arrangements even then be allowed.

#### Things To Think About

1. Health Codes
2. Sanitation
3. Water Temperatures
4. Sterilization
5. Towel standards
6. Cleaning equipment and surfaces
7. Use of a toilet
8. What else is washed dried in home laundry?
9. Not accessible to Health inspectors
10. Can disable person access?
11. Cheap operation cost, compared to commercial location
12. Everyone can create a "family need" to work in their home.
13. If chemicals are left on your hair/scalp too long you can get a burn.
14. Eye irritation
15. You pay taxes on your income. Do you think a "cash only home operator will? This affects profit!
16. What do you know about hair/body waxing, hair plucking?
17. Think you have an illegal cosmetology operation near your house?
18. Want a home operation next door?

LAWRENCE O. EASON  
CHERYL R. EASON  
1017 KENNON COURT  
Rockville, MD

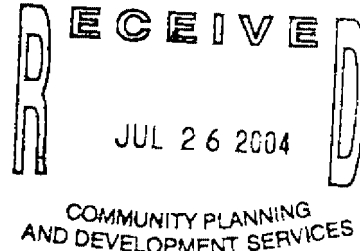
LAWRENCE DIXON  
KATHY DIXON  
1016 Kennon Court  
Rockville, MD 20851

BARBARA L. YOUNG  
1020 Kennon Court  
Rockville, MD 20851

July 26, 2004

The Mayor and Council  
The Planning Board

Re: Text Amendment 2004-00208 – Erika Kapneck



2004 JUL 26 AM 9:54

CITY OF ROCKVILLE

We are gravely concerned about Ms. Kapneck's application to amend the City Code to allow for home based cosmetology businesses as a "right" rather than is currently the case, by special exception, as discussed in the July 19, 2004 Public Hearing of the Mayor and Council of Rockville.

Much of the July 19<sup>th</sup> session focused on the 1981 application of Bernard and Elaine Rabin of 1022 Kennon Court for an exception to establish a cosmetology business in their home on Kennon Court. The neighborhood was actively involved in that case, and it is imperative that the attention of The Mayor and Council and the Planning Board members be directed to the full record in that case. We were surprised by the numerous misconceptions we heard during the July 19<sup>th</sup> General Session that were apparently accepted as fact by Ms. Kapneck, her supporters, several council members and even by the Mayor himself. It appears that the existing record has not been thoroughly reviewed. The Rabin application was denied because the alternative offered to them by the Mayor, Council and Planning Board during the course of their hearing, was not acceptable to them, and they chose not to accept it. The Rabins requested that they be allowed to establish a 4 chair, full service beauty salon, to include electrolysis services. They refused to accept anything less.

That was 1981. Fast forward to the present.

Ms. Lora Meisner, President of the Burgundy Estates Civic Association, wrote a letter dated July 11, 2004 supporting Ms. Kapneck's requests in full. The Easons have been fully active, dues paying members in this civic association from its inception. There has been no presentation of the issue, no discussion, no telephone calls, no vote, no nothing. Ms. Meisner clearly took it upon herself to write a letter purporting to represent the view of the Association with no authority to do so. The opinion voiced in her letter of July 11 is her personal opinion. It does not reflect the considered view of the Burgundy Estates Civic Association. There is no considered view because the issue has never been presented. Ms. Meisner has usurped her authority. That is alarming and we do not make these comments lightly.

Ms. Kapneck appears to be a smart, hard-working, law abiding and conscientious woman who likely would run her home business capably and with every consideration to her



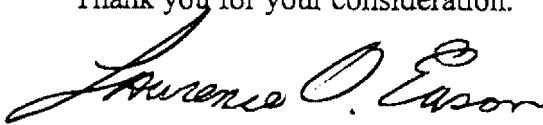
neighbors. We applaud her efforts and have no desire or reason to stand in her way. Make your decision on her request for a special exception to operate a cosmetology business in her home on the facts and merits of her application.

At the same time, we strongly oppose her effort to eliminate the requirement to obtain a special exception. She argues that the \$200 fee and sign posting requirements are overly burdensome. While this may be true in her situation, neighbors are entitled to know what is being contemplated in their neighborhood. If a business is located in the immediate vicinity and will have any effect on their neighborhood, they should know about it. The fee is nothing more than the cost of doing business. Every business, no matter its location has overhead and fees to pay.

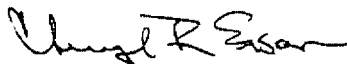
We urge you to reflect a step further. We are concerned for our rights to enjoyment of our property and neighborhood. Our laws are in place to protect everyone's rights, applicants and opposition alike, our freedoms and our property. Because the requirement for a special exception was in place in 1981, the interests of Burgundy Estates neighborhood and especially Kennon Court were and continue to be protected. Do not lose sight of the fact that it is not just the applicants who have rights and are entitled to full and careful consideration based on facts. Please keep that in mind when considering your final decision on this application.

We strongly urge that you do not grant this text amendment.

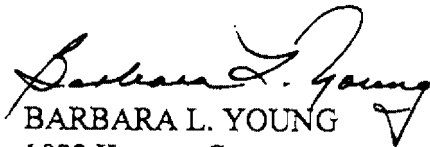
Thank you for your consideration.



LAWRENCE O. EASON  
1017 Kennon Court  
Rockville, MD 20851



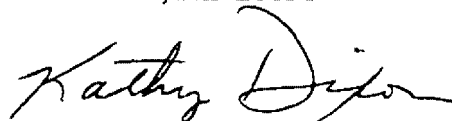
CHERYL R. EASON  
1017 Kennon Court  
Rockville, MD 20851



BARBARA L. YOUNG  
1022 Kennon Court  
Rockville, MD 20851



LAWRENCE DIXON  
1016 Kennon Court  
Rockville, MD 20851



KATHY DIXON  
1016 Kennon Court  
Rockville, MD 20851

Exhibit # 22

Subject: TXT 2004-00208

Public Hearing Date: 7/19/04

Routed To:  
☒ Council  
☐ City Clerk  
☒ City Manager

July 25, 2004

☒ City Attorney  
☐ Council Support Specialist  
☒ Other Art Chamber  
Bob Spald  
Don Miller

To the Mayor and Council of the City of Rockville Maryland,

Ms. Mary Ellen Morrison, Manager, Maryland with Pride, Department of Business Economic Development, Office of Small and Minority Business, State of Maryland

Mr. Frank Hilton, Chairman, Planning Commission, City of Rockville

Ms. Briggitta Mullican, Member Planning Commission, City of Rockville

I am writing to voice my concern at the exceedingly casual attitude of the public officials at the Public Hearing of the Mayor and Council on July 19, 2004, with regard to the statements of Mr. Bernard Rabin.

I have lived at 1017 Kennon Court in Rockville since 1973; our home is two doors away from the the Rabin home. We were actively involved in 1981 in the neighborhood opposition to the Rabin's plan to open a full service, four chair commercial beauty salon in their home. We were very concerned about the added traffic that would come to Kennon Court (a cul-de-sac) and the additional parking, which the Rabins stated they would solve by paving their backyard.

While I can not say with certainty, I don't believe Mr. Rabin is currently a citizen of Rockville.

Ms. Kapneck, the current applicant, seems to be a conscientious and considerate individual that will operate her cosmetology business in a responsible manner. She should be granted the Special Exception.

My concern is the shameful response of those in attendance at the July 19, 2004 meeting to Mr. Rabin's statement that 'If I had brought back a weapon from Korea, I think I would have have shot him (Mr. Mike Young, who lived next to the Rabins in 1981).

Obviously, Mr. Rabin was playing the fool and making these comments in response to the peals of laughter at his comments.

7/25/04 PM 9:54

CITY OF ROCKVILLE  
COUNCIL OFFICE

MY FAMILY STILL LIVES within 50 yards of the Rabin home, and I found his comments absolutely chilling

Had a child in an American high school in 2004 made such a threat, he would probably have been sent home. Had an employee in an American company made such a statement, he would have probably been isolated and possibly suspended.

Mr. Rabin's comments were met with peals of laughter by all!

Obviously, those who found this so hilarious don't live 50 yards away from the Rabin household!

I thank the Mayor for cutting off the conversation at that point, but feel Mr. Rabin should have been chastised for his comments.

A handwritten signature in cursive script that reads "Lawrence O. Eason".

Lawrence O. Eason  
Member of City of Rockville Recreation and Parks Advisory Board  
1017 Kennon Court  
Rockville MD 20851



City of Rockville

## MEMORANDUM

July 15, 2004

TO: Mayor and Council

FROM: Planning Commission

SUBJECT: Planning Commission Recommendation on Zoning Text Amendment TXT2004-00208, to allow cosmetologist as a special exception use in the one-family residential zones.

At its meeting on July 14, 2004, the Planning Commission considered proposed Zoning Text Amendment No. TXT2004-00208. The text amendment would allow cosmetology as a special exception use in the one-family residential zones as a home occupation with additional standards.

The Commissioners were given a presentation by the staff, and heard testimony from the applicant and citizens. The applicant testified that making the use a special exception did not make sense, given the nature of other home occupations that are currently permitted by right. The cosmetology use would have no greater impact than many professional offices now allowed.

The Planning Commission concurs with the applicant that this use should be allowed by right. There appear to be no facts to the contrary in the record. Commissioner Ostell can support the use by right, but suggests the Mayor and Council may wish to consider some limitation on the number of clients on-site at one time.

Therefore, on a motion by Commissioner Mullican, seconded by Commissioner Johnson, the Planning Commission by a vote of 6-to-0 recommends that the text amendment be modified to allow the proposed use as a permitted home occupation in the one-family residential zones.

DM

cc: Planning Commission



City of Rockville

## MEMORANDUM

July 7, 2004

TO: City of Rockville Planning Commission

FROM: Deane Mellander, Planner III

VIA: Bob Spalding, AICP, Chief of Planning

SUBJECT: Proposed Zoning Text Amendment TXT2003-00208; To allow "Cosmetologist" as a special exception use in the one-family residential zones.

### BACKGROUND

The applicant initially submitted a request to the Mayor and Council for zoning text amendment to allow cosmetology as a permitted home occupation use in the residential zones. The Mayor and Council held a preliminary review of the request at the meeting on May 10, 2004. The Mayor and Council directed the staff to draft a text amendment designating the use as a special exception within the home occupation regulations and limiting the use to one service chair.

### ANALYSIS

The statement of the applicant, Attachment 3, was presented to the Mayor and Council in support of adding cosmetology as a permitted home occupation. At the time of preliminary review by the Mayor and Council the staff expressed concern to that allowing the use without restriction might result in a substantial commercial operation in the one-family neighborhoods. In addition, under State regulations a cosmetologist operating in a one-family residence must have a direct entrance from the outside into the service area, which is at odds with the strict reading of the City's home occupation regulations.

Between 1961 and 1981 the zoning ordinance allowed "beauty culture" as a special exception in the one-family zones, under the home occupation regulations. Several special exceptions for the use were granted during this time period. The use was deleted from the code by text amendment T-40-80 following a public hearing in which some citizens testified that the use could have an adverse impact on the one-family neighborhoods.

As indicated above, the applicant has requested that the use, now termed cosmetology, be reinstated in the code as a permitted home occupation. The applicant raises a number of factual and legal issues in support of her application. Although these issues may be considered by the Mayor and Council, none of them compel the Mayor and Council to allow cosmetology in a residential zone, either as a permitted "as of right" use or as a special exception use. Regardless of any alleged "errors" that may or may not have been made in the past, the issue of which uses are allowed in which zones in the City is wholly within the legislative discretion of the Mayor and Council.

The proposed text amendment would amend the language of Section 25-1, "Definitions", as well as add a new section to Article VIII, regulating special exceptions. The change in the definition of Home Occupations is needed because of an apparent conflict between the restrictions on separate outside entrances, and the requirements of the State that such a cosmetology use have a direct entrance from the outside. Currently, only health professionals may have a separate entrance. This provision apparently has been interpreted in different ways over the years. In order to avoid any ambiguity, staff felt it useful to specifically designate a cosmetologist as a use that may have a separate entry.

The text amendment will amend the Use Tables to add a new item number 7 under the Home Occupations provision entitled Cosmetologist. An "S", indicating a special exception, is to be added in all of the one-family residential zones, R-60 thru R-E.

The proposed text amendment would add a new Section 25-375 to Article VIII, Division 2, that provides specific standards and requirements for a cosmetologist as a special exception use. The provision is limited only to the use as a home occupation in the one-family zones. The staff-recommended changes parallel the findings and conditions of accessory apartments. It does not apply in the nonresidential zones. Where the use is otherwise permitted, it is not subject to these provisions.

Consistent with the way this use was administered between 1961 and 1981, the use must comply with the provisions regulating home occupations in Sec. 25-1. This means that the service may be performed only by members of the immediate family residing in the home, cannot use more than 20% or 300 square feet (whichever is lower) of the gross floor area, and cannot have any assistants not residing in the home. In addition, only one customer service chair per residence is allowed.

The provision also allows the Board of Appeals to approve a separate entrance to the use from the outside, as required by the State Department of Labor, Licensing and Regulation. Such entrance must retain the single-family appearance of the house, as must any related modifications to the house. No variance may be granted to accommodate the use. The Board may impose additional conditions, such as regulating the hours of operation or the number of customers on-site at one time, so as to limit any adverse impact on the surrounding neighborhood.

The staff is proposing that at least one off-street parking space be required in connection with the use, beyond the two spaces normally required for the house. If the Board determines that there is sufficient on-street parking to accommodate the use without adverse impact, the off-street parking may be waived. In addition, the applicant must possess a valid cosmetology license from the State before the special exception use can be undertaken.

Finally, the proposed language requires that the use be limited to the applicant and not "run" with the land. The use will automatically expire under the following conditions:

- The owner/applicant sells the property;
- The use is abandoned for a period of 6 months;
- The owner/applicant's license is suspended, revoked by the State or expires.

The applicant maintains that cosmetology should be treated no differently than other home occupations that are permitted by right, such as health professionals, lawyers, CPA's and the like. There are permitted by right, with no additional regulations beyond those contained in the Home Occupation definition. While there may be some merit to this argument, the larger issue is the need for a broader review of the home occupation provisions. The County and the City of Gaithersburg have substantially amended their provisions in the past 15 years, whereas the City's regulation has not substantially changed since the 1950's. However, the review process would entail a substantial amount of work program effort. Such work should more properly be folded into a comprehensive review of the entire zoning ordinance. The Mayor and Council have a three-year program, beginning in this fiscal year, to review the ordinance.

## **PUBLIC NOTICE**

Notice of the public hearing and the substance of the proposed text amendment was mailed to all the civic associations and other interested parties.

## **RECOMMENDATION**

The current draft text amendment will address the immediate concern of the applicant in a way that does not substantially alter the intent of the home occupation provisions. Staff therefore recommends that the proposed text amendment be approved as shown in the attached language.

/dem

Attachments: 1. Draft text amendment, June 8, 2004  
2. Text Amendment Application

Page 4  
July 7, 2004

3. Applicant's Statement and Supporting Materials
4. Correspondence Received